

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LAURA GROSS,

Plaintiff-Appellant,

v

HARBOR CLUB NORTH ASSOCIATES, L.L.C.,

Defendant-Appellee,

and

PETER CUBBA,

Defendant.

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UNPUBLISHED

October 18, 2005

No. 261399

Macomb Circuit Court

LC No. 2003-002271-CZ

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition to defendant Harbor Club North Associates.<sup>1</sup> We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff purchased a condominium from defendant, the developer, in 2000, then discovered that the property had a pervasive mold problem. According to plaintiff, the presence of this mold caused her to experience nausea, fatigue, and difficulty breathing. Attempts to remedy the situation have not been entirely successful.

Plaintiff brought suit, setting forth counts of fraud, innocent misrepresentation, violation of the Michigan Consumer Protection Act,<sup>2</sup> negligence, violation of the Seller Disclosure Act,<sup>3</sup>

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<sup>1</sup> Because defendant Harbor Club North is the only defendant participating in this appeal, the singular term "defendant" in this opinion will refer exclusively to that entity.

<sup>2</sup> MCL 445.901 *et seq.*

<sup>3</sup> MCL 565.951 *et seq.*

and intentional infliction of emotional distress. The latter count was separately dismissed. That decision is not at issue in this appeal.

Defendant moved for summary disposition of plaintiff's remaining claims pursuant to MCR 2.116(C)(8) and (10). The trial court granted the motion pursuant to MCR 2.116(C)(10), concluding that plaintiff failed to produce evidence that defendant knew, or reasonably should have known, that a toxic mold condition existed when she purchased her unit.

"In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4).

The only evidence on the record before the trial court that before plaintiff purchased her unit, defendant had knowledge of a condition potentially related to mold, was an engineering report stating, "the wood in the crawl space shows signs of being damp for extended periods," and adding that an indication of this is "the rotted floor sheathing and framing members below each furnace closet." As the trial court observed, these indications of dampness included "no showing the dampness was unreasonably dangerous in the form of mold or mildew."

But plaintiff insists that "**mold is mold**," the discovery of which "is what shows the existence of prolonged or extended periods of exposure to moisture, with regard to structures" (bold in the original), suggesting both that mold is the only way to detect prolonged dampness, and that notice of a persistent damp condition equals notice of a serious mold problem. We accept neither of these unsupported propositions. Moreover, plaintiff fails to acknowledge that even if some mold was detected, this would not necessarily indicate the presence of one of the small minority of varieties of mold that threaten human health.<sup>4</sup>

Because dampness does not equal mold, and mold is not necessarily toxic mold, we agree with the trial court that plaintiff failed to show that defendant had notice of a toxic mold problem when plaintiff purchased her condominium. Defendant was entitled to summary disposition.

Affirmed.

/s/ Henry William Saad  
/s/ Kathleen Jansen  
/s/ Jane E. Markey

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<sup>4</sup> See Grant, *Toxic mold: what insurers can do to abate the influx of litigation*, 38 New Eng L Rev 141, 142-143 (2003) ("Of the more than one-hundred thousand types of mold currently known to science, about thirty-six are potentially harmful to humans.") (footnotes omitted).